



General Purchasing Terms and Conditions for Goods and Services

DATE 1 March 2018

1. Definitions

The terms below are defined as follows in these general purchasing terms and conditions:

- 1.1 **EBN:** EBN B.V. with registered office in Utrecht and principal place of business at Daalsesingel 1, 3511 SV Utrecht (Chamber of Commerce no.: 14026250);
- 1.2 **Purchasing Conditions:** these general purchasing terms and conditions of EBN;
- 1.3 **Supplier:** any natural person or legal entity with which EBN has entered into an Agreement or which has issued EBN a proposal to that end;
- 1.4 **Agreement:** the agreement between EBN and the Supplier and every amendment and supplement thereto, for the purchase of goods and/or services to EBN by the Supplier;
- 1.5 **Personal Data:** personal data as defined in the General Data Protection Regulation (EU) 2016/679 of the European Parliament and Council of 27 April 2016;
- 1.6 **Performance:** the performance to be delivered by the Supplier to EBN based on the Agreement.

2. Applicability of the Purchasing Conditions

- 2.1 The Purchasing Conditions apply to every Agreement.
- 2.2 In the event of discrepancies between these conditions as presented in the Dutch language and translations thereof, the Dutch version is binding.

3. Establishment of an Agreement

- 3.1 Agreements are not established until EBN has explicitly accepted in writing an offer to this end from the Supplier or after EBN has accepted the particular offer by explicitly performing the Agreement.
- 3.2 All acts and investments undertaken by the Supplier in connection with and prior to the establishment of an Agreement are entirely at the Supplier's own expense and risk.

4. Amendments to an Agreement

EBN and the Supplier can exclusively amend the Agreement in writing.

5. Prices

- 5.1 Unless agreed otherwise in writing, all prices agreed on or offered are fixed and cannot be unilaterally adjusted by the Supplier. All prices are exclusive of VAT but inclusive of all direct and indirect costs, other levies and taxes. The set-off of any exchange rate differences is excluded.
- 5.2 Price adjustments (including periodic indexation) must be agreed on in writing in advance between EBN and the Supplier.

6. Interim termination of an Agreement

EBN has the right to terminate the Agreement in the interim by written cancellation, with due observance of a reasonable notice period and without prejudice to EBN's right to dissolve the Agreement. In cases that arise, the Supplier will be entitled to payment of the agreed price for the services to the extent to which they have been performed in accordance with the Agreement, as well as to payment of whatever costs the Supplier reasonably incurred prior to the termination which cannot in all reasonableness be undone. The Supplier must provide insight into these costs and, at EBN's request, provide an accountant commissioned by the parties at their joint expense access to its records.

7. Delivery terms and conditions

- 7.1 The delivery of goods takes place DDP Utrecht (Delivery Duty Paid) in accordance with Incoterms 2010 and according to EBN's instructions.
- 7.2 All documents relating to or in connection with the Performance must be submitted to EBN no later than at the moment of delivery or completion or, where possible, sent to EBN in advance.

- 7.3 In the event of the delivery of items, also in the context of maintenance, replacement of parts or otherwise, ownership of the items delivered or to be delivered at EBN transfers at the moment at which the item to be delivered is identified or separated at the Supplier as intended for EBN.
- 7.4 In the event of deliveries that take place in performance of a contract for services, the work supplied is for EBN's risk at the moment the work is completed. Completion takes place by virtue of EBN inspecting the item or work and accepting it, with reservations or otherwise, after the Supplier has notified EBN that the item or work is finished.
- 7.5 Transfer of risk takes place at the moment at which the item or work delivered is received by EBN, except in the event of a contract for services, in which case the risk transfers upon completion.

8. Taking delivery

- 8.1 EBN is not obligated to inspect or commission inspection of the items delivered or software made available after delivery is taken of these, without prejudice to whatever has been stipulated in this respect by the Supplier in an order confirmation or similar document.
- 8.2 Taking delivery of the Performance does not imply acceptance of the Performance. EBN is not required to accept any deviation from the agreed specifications or, if further specifications have not been agreed on, any deviation from the properties that EBN should reasonably be able to expect. EBN's determination of the properties of what has been delivered applies between the parties as conclusive evidence, barring evidence to the contrary.
- 8.3 The Supplier is required to notify EBN in writing prior to delivery of any change, of any nature or size whatsoever, in the composition or properties of the goods to be delivered. EBN has the right to terminate the Agreement and cancel the delivery or dissolve the Agreement without being obligated to compensate any damage.

9. Invoicing and payment

9.1 All invoices must contain the following details:

- an overview of the work performed or a specification of the products supplied;
- the date on which the work was performed or products supplied were actually delivered, the number of hours worked and the rates charged or the date on which the products supplied were actually delivered.

Invoices must be made out as follows and directed to the following invoicing address:

EBN B.V.
Attn: Accounts payable administration
Daalsesingel 1
3511 SV Utrecht

- 9.2 Unless EBN makes complaints about the quality or quantity of what has been delivered after provision of the Performance, payment will take place within thirty (30) days after receipt of the invoice, provided the invoice satisfies the requirements stipulated in clause 9.1 and the invoice has not been contested by EBN within the payment term.
- 9.3 If the invoice does not satisfy the provisions in clause 9.1, this could cause delay in payment of the invoice amount, without this delay giving the Supplier any right to dissolve the Agreement or any right to (additional) damage compensation.
- 9.4 If the Performance provided is not invoiced to EBN within 16 weeks after the work was performed or delivery took place, the right to payment for this is forfeited.
- 9.5 EBN only makes advance payments if this has explicitly been agreed upon in writing. In that case, all payments made by way of advance payment are considered a loan to the Supplier until the Performance has been completed.

10. Goods to be provided by EBN

All goods provided by EBN, including but not limited to documentation, products, software and other resources, which EBN provides to the Supplier in connection with the performance of the Agreement remain the (intellectual) property of EBN and must be returned to EBN immediately after provision of the performance and/or after termination of the Agreement, or at EBN's request.

11. Intellectual property

- 11.1 Intellectual property rights that already belonged to EBN or the Supplier prior to the date of this Agreement (or which had been given to one of them in licence) remain the property of the original owner (or, as the case may be, of the licensor).
- 11.2 The Supplier will not be permitted to use the materials referred to in clause 11.1, or allow these to be used by third parties, reproduce these or provide third parties with access to them for or in connection with any purpose other than provision of the Performance.
- 11.3 If, on EBN's instructions, works are created in which intellectual and/or industrial property rights are vested or could vest, these rights are transferred to EBN, now for such an event, whereby EBN accepts these rights, now for such an event.
- 11.4 Insofar as the transfer of the rights referred to in clause 11.3 at any time requires a further deed, the Supplier irrevocably authorises EBN, now for such an event, to draw up such a deed and also sign it on the Supplier's behalf, without prejudice to the Supplier's obligation to cooperate with the transfer of these rights immediately on EBN's request, without being able to stipulate any conditions for this.
- 11.5 To the extent that the parties have explicitly agreed in writing in deviation from the above that EBN acquires a licence for the use of the aforementioned works, this licence is perpetual, exclusive and transferable, whereby EBN will also have the right to grant sub-licences.

12. Dissolution

EBN can dissolve the Agreement, wholly or in part, with immediate effect and without court intervention or (further) notice of default being required, and without prejudice to its other statutory rights, if:

- a) the Supplier fails to comply with its obligations towards EBN arising from the Agreement and these Purchasing Conditions, or fails to do so in full;
- b) it should emerge after delivery has been taken and/or payment has been made that the Performance does not correspond to the specification or does not have the properties that EBN should reasonably be able to expect;
- c) the Supplier has adopted a resolution to dissolve its legal entity or company;
- d) there are changes in the control of the Supplier;
- e) the Supplier's bankruptcy is applied for or declared or a provisional or definitive moratorium on payments is applied for or granted with respect to the Supplier;
- f) the Supplier merges, splits or in any way transfers (part of) its business;
- g) the Supplier is in a situation of force majeure as referred to in article 6:75 of the Dutch Civil Code for more than ten consecutive days.

13. Guarantees for the supply of items

- 13.1 The Supplier guarantees that (i) the items supplied or to be supplied by it answer to the Agreement and are suitable for the use to which EBN envisions putting the item to be supplied. The guarantee period is at least 24 months from EBN's receipt of the product.
- 13.2 During the guarantee period, the Supplier will, after being given notice by EBN, either remedy all errors and defects in and/or replace (parts of) the items supplied, as EBN chooses, at the Supplier's own expense and risk.
- 13.3 The Supplier is obligated to remedy the defect and/or provide the replacement within ten working days after the notice referred to in clause 13.2.

14. Guarantees for the performance of services

- 14.1 If services are provided, the Supplier will at least exercise the care of a professional Supplier acting competently so that the Agreement is performed to a high standard of quality.
- 14.2 The Supplier guarantees that all services will be performed in accordance with the (safety and environmental) regulations in effect for these by law.

- 14.3 The agreed work may only be outsourced to third parties after advance written approval has been obtained from EBN. The Supplier is required to provide EBN with the name and address details of the aforementioned third party at EBN's request.
- 14.4 Even if outsourcing to third parties has been agreed on, the Supplier remains responsible and liable for the performance of the Agreement by these third parties.
- 14.5 The Supplier is required to adhere to EBN's working times and schedules and must make every effort when performing the work to avoid disrupting the work of EBN or of third parties.
- 14.6 In the event of absence or indications of inadequate suitability of a person for the Performance and also in the event of complaints from EBN about performance of the Agreement by a person, the Supplier will ensure that the person concerned is immediately and adequately replaced.
- 14.7 In the event of illness, the Supplier will ensure that the person concerned is immediately and adequately replaced.

15. Guarantees in the event of maintenance/contracting work

- 15.1 The Supplier guarantees that all replacement parts involved in the maintenance to be performed by the Supplier (other than in relation to software, but including repairs) are new and have a factory guarantee or guarantee from the importer.
- 15.2 The Supplier guarantees the proper performance of the maintenance performed by it and/or performance of the work and the materials used in the context of such performance for a period of twelve months counted from the date on which the particular equipment or installation has once again been taken into use by EBN, unless the manufacturer or supplier of the aforementioned materials has granted a longer guarantee on these, in which case the guarantee provided by the Supplier will be at least as long as this longer term.
- 15.3 The guarantees granted in clauses 15.1 and 15.2 include corrective maintenance work for maintenance that has been performed improperly. If the maintenance has been performed improperly, EBN will notify the Supplier of this in writing. If the maintenance yet to be performed by the Supplier is no longer possible or worthwhile in EBN's reasonable opinion, EBN has the right to alternative and additional damage compensation.
- 15.4 If EBN has specifically agreed on the maintenance ("specific maintenance"), the Supplier only has the right to perform this specific maintenance. If EBN has given an assignment for (general) regular maintenance ("regular maintenance"), the Supplier will in any event perform the maintenance in accordance with the maintenance schedule provided by the manufacturer of the particular device, the particular installation or software, as well as the maintenance necessary to comply with the statutory regulations relating to the properties of the equipment, installation or, in cases that arise, software.
- 15.5 In the event of contracts for services, EBN has the right to request more or less work. There can only be more or less work to the extent this has been agreed on in writing. In the event of less work, the price for the Performance will be reduced proportionately.
- 15.6 If, in the Supplier's opinion, there is a case of more work and the Supplier determines that this has consequences for the agreed price and/or delivery time, the Supplier is obligated, before following through on the change, to notify EBN about this as quickly as possible. Work that the Supplier could or should have foreseen in advance or which results from a failure on the part of the Supplier will not be charged. If EBN deems these consequences for the price and/or delivery time to be unreasonable with respect to the nature and scope of the change, EBN has the right to require that the Performance be delivered unchanged or that Performance be delivered including the changes deemed acceptable by EBN, or to dissolve the Agreement with immediate effect as referred to in clause 12.

16. Guarantees for the supply and/or use of software

- 16.1. If EBN is supplied with products consisting of software or of which software is a component, the Supplier guarantees that the software is free of viruses, trojan horses and other malicious codes and that it has taken adequate measures to prevent the introduction of such viruses, trojan horses and other malicious codes.
- 16.2 If, when performing the services for EBN, the Supplier uses software developed by the Supplier or licensed from third parties, the Supplier guarantees that this software is free of viruses, trojan horses and other malicious codes

and that the Supplier uses an adequate and updated virus scanner and firewall to prevent the introduction of viruses, Trojan horses and other malicious codes.

- 16.3 The Supplier guarantees that the supply of or use of the software supplied by it, or products of which software is a component, does not in any way infringe third-party intellectual property rights and the Supplier will compensate and indemnify EBN, its directors and employees for third-party claims in relation to the supply and/or use of such software.
- 16.4 In the event of standard software for which EBN receives a user licence, this licence is perpetual, non-exclusive and transferable. EBN also has the right to grant sub-licences on the basis of its own sub-licensing conditions. In the event custom software is supplied, the copyrights to the software are held by EBN from the moment of creation, or at least, if this proves impossible at law, the Supplier is required to transfer the copyrights to EBN at EBN's request within a reasonable term.
- 16.5 Upon first notice from EBN, the Supplier will repair at its own expense any defects in the software which occur in the twelve-month period after EBN has taken the software into (operational) use.

17. Repair or replacement by third parties

- 17.1 If EBN determines that faults or defects ascertained in products supplied (or parts thereof) or improperly performed services require immediate repair or replacement, and the Supplier cannot immediately perform this repair or immediately ensure this replacement, EBN has the right to have the repairs or replacement carried out by a third party at the Supplier's expense.
- 17.2 The same applies in the event of non-compliance on the Supplier's part with its obligation to remedy faults, defects or improperly performed services as referred to in clause 17.1.
- 17.3 The Supplier is required to pay EBN the costs of the third party for the repairs or replacement within 30 calendar days after EBN sends an itemised invoice, without the Supplier having any right to set-off.

18. Liability

- 18.1 A party that fails to comply with its obligations under the Agreement is obligated to compensate the other party for the damage suffered.
- 18.2 If the Supplier uses goods owned or made available by EBN (as referred to in clause 10) for the performance of services, the Supplier is liable for any damage caused to these items.
- 18.3 If the use of EBN's property at the Supplier to perform the Agreement causes damage to the Supplier or third parties in any way whatsoever, this damage is entirely at the expense and risk of the Supplier.
- 18.4 The damage to be compensated by the Supplier on grounds of clauses 18.1, 18.2 or 18.3 is capped at three times the contract value of the agreement. The maximum liability is EUR 1,500,000.
- 18.5 The compensation of any damage by EBN on grounds of the agreement or based on unlawful act is limited to three times the actual compensation paid by EBN to the Supplier under the agreement in the 12 months prior to the loss-causing circumstance. The maximum liability is EUR 1,500,000.
- 18.6 The limitation of liability on grounds of clauses 18.4 and 18.5 ceases to have effect:
- a) in the event of damage compensation as the result of death or personal injury;
 - b) if there is a case of intent or gross negligence on the part of the Supplier or EBN or their employees, subordinates or the third parties they engage, or;
 - c) in the event of the infringement of intellectual property rights as referred to in clause 11.
- 18.7 The Supplier will properly insure itself against the risk of its potential liability under the Agreement concluded with EBN and renew this insurance throughout the term of the aforementioned Agreement. At EBN's request, the Supplier will provide EBN with insight into the original insurance policy.
- 18.8 If the insured sum under the insurance referred to in clause 18.7 is higher than the maximum liability stated in clause 18.4, the insured sum is regarded as the maximum liability.
- 18.9 The Supplier indemnifies EBN against all third-party claims against EBN for compensation of direct and indirect damage on grounds of clause 18.1.

19. Transfer of rights and obligations

- 19.1 The Supplier will not transfer or encumber its rights, including any (future) claims, on EBN and its obligations under the Agreement without prior written permission from EBN.
- 19.2 Every transfer or encumbrance that takes place in violation of the provisions in the previous clause is without any effect under property law which means that even after the transfer or encumbrance, EBN will still remain the entitled party (fully and unencumbered).

20. Data protection

- 20.1 The Supplier will treat any Personal Data) which it acquires in the context of the performance of the Agreement as confidential information, as referred to in clause 22 of these Purchasing Conditions.
- 20.2 If any Personal Data are processed by the Supplier, the Supplier is responsible for compliance with its obligations under the GDPR.
- 20.3 The Supplier will not transfer any data to countries outside the European Economic Area unless and to the extent it has explicit written permission from EBN.
- 20.4 The Supplier will take all necessary technical and organisational measures to secure Personal Data against unauthorised or unlawful processing. The Supplier will also take all necessary measures to secure Personal Data against the loss, destruction of or damage to Personal Data.
- 20.5 The Supplier will indemnify EBN against any legal claim from third parties, including EBN employees, relating to or arising from the Supplier's breach of its obligations under this clause 20.

21. Integrity, ethical standards and human rights

- 21.1 The Supplier will not make, offer, promise or approve payment, give cash or give or offer anything else of value directly or indirectly to a person or company with the aim of illegally obtaining or forcing a decision or securing a business transaction or any other advantage in connection with an Agreement.
- 21.2 The Supplier will comply with all relevant statutory obligations in effect, such as (but not limited to) the OECD Regulation on Combating the Bribery of Public Officials, the US Foreign Corrupt Practises Act and the UK Bribery Act 2010.
- 21.3 In connection with compliance with this integrity provision, EBN has the right to conduct or commission an audit at any desired moment during the term of the Agreement after prior notice to the Supplier given a reasonable time in advance, in any event not less than one week before the planned audit.
- 21.4 Unless otherwise required or prohibited by law, the Supplier guarantees that, to the best of its knowledge, in relation to the Performance it:
 - a) does not engage in, consort with or otherwise make use of child labour in circumstances whereby it can in all reasonableness be foreseen that the tasks carried out by means of such child labour cause physical or emotional damage to the development of such a child;
 - b) does not use any form of forced labour (imprisonment, bondage or otherwise) and that its employees are not required to hand over any documents or security deposits into custody at the start of work;
 - c) does not discriminate in relation to employees on any grounds (including race, religion, disability or gender);
 - d) does not engage in any corporal punishment, mental, physical, sexual or verbal abuse and does not support the use of such and does not use at the work place any harsh disciplinary practices or disciplinary practices that are associated with abuse;
 - e) pays every employee at least the minimum wage or a fair representation of the salary applicable in the industry (whichever is higher) and provides every employee with all the compensations required by law;
 - f) observes the laws concerning working times and employment law in the countries in which it operates;
 - g) acknowledges the right of its employees to become members of or set up an independent trade union, and the right to freedom of assembly;
 - h) refrains from practices that are in violation of national and international competition law.

21.5 The Supplier agrees that it is responsible for managing its own supply chain and that it will encourage compliance with ethical standards and human rights at any other suppliers of goods and services of which the Supplier makes use in fulfilling its obligations in accordance with this Agreement.

22. Secrecy

22.1 The Supplier will not provide to third parties any information which it has been informed is confidential or which it should in all reasonableness have realised was confidential, including but explicitly not limited to the results of investigations (reports, etc.).

22.2 In the event of violation of the duty of secrecy as referred to in clause 22.1, the Supplier owes EBN compensation of EUR 50,000 per violation.

22.3 The Supplier will not implicitly or explicitly mention the (granting of the) assignment in publications (which includes press releases) or promotional material and will not use EBN's name as a reference unless it has first obtained written permission to do so from EBN.

23. Survival clauses

Clauses which by their nature are intended to remain in effect beyond the end of the Agreement will remain in effect thereafter. These clauses at least include: Applicability of the Purchasing Conditions (clause 2), Intellectual property (clause 11), Guarantees (clauses 13, 14, 15 and 16), Secrecy (clause 22), Applicable law and disputes (clause 24) and this clause in relation to survival clauses.

24. Applicable law and disputes

An Agreement is governed by Dutch law, with the explicit exclusion of the Vienna Sales Convention (CISG). All disputes will be settled by the District Court of Midden-Nederland, unless EBN prefers to submit the dispute to the competent court where the Supplier has its domicile/registered office.